In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 958

LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 14-16) is reported at 401 F. 2d 509. The Board's decisions and orders (R. 22-46)[1] are reported at 156 NLRB 335 and 169 NLRB No. 164.

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[1] References designated "R." refer to the appendix to the Board's brief in the court below. "TR." refers to the stenographic transcript of the Board hearing, "G.C." refers to the General Counsel's exhibits, and "R. Exh." refers to Local 182's exhibits.

JURISDICTION

The decree of the court of appeals was entered on October 29, 1968 (Pet. 2). The petition for a writ of certiorari [2] was filed on January 20, 1969. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 591, 29 U.S.C. 151, *et seq.*) are set forth at page 2 of the petition.

QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the union caused an employee to be discharged for dues delinquency under a union security agreement without first having apprised the employee of the existence of that agreement and his obligation thereunder.

STATEMENT

On August 26, 1956, Harold C. James was hired as a truck driver by Associated Transport, Inc. (the Company) at its North Tonawanda, New York, terminal. Shortly thereafter he applied for membership in Teamsters Local 449, the collective bargaining representative of the Company's employees, and de-

[2] Although labeled an "Appeal", the Board, in accordance with 28 U.S.C. 2103, has treated petitioner's document as a petition for certiorari.

posited his dues and union fees (R. 9, 25; Tr. 33, 45-46). Sometime prior to December 3, 1956, James became ineligible for membership because of unemployment, and his dues and fees were refunded (R. 9, 24; Tr. 48, G.C. Exh. 4, 5). Although he was later rehired by the Company, Local 449 did not seek to enroll him as a member of the union, and James accordingly continued to work for three years without becoming a union member (R. 24 and n. 1; Tr. 35, 56).

Late in 1959, the president of Local 182, which had jurisdiction over the Utica, New York, area, having ascertained that James was not a union member and that Local 449 did not wish to represent him, informed him that unless he became a union member he would not be permitted to pull freight out of the Utica terminal (R. 10-12, 24; Tr. 56, 126-127, 134-138, 171-172). James thereupon joined Local 182, and remained a member until March 1, 1963, when, without notification, he was expelled for nonpayment of dues (R. 10-11, 25; Tr. 138-140, 175, R. Exh. 4).

In January 1964, the Company and Local 182, together with other employers and Teamsters locals, including 449, became parties to the Teamsters National Master Freight Agreement, effective from February 1, 1964 to March 31, 1967. This agreement contained a valid union security clause which required all present employees to become members of the "Local Union" within 31 days, as a condition of continued employment (R. 25; G.C. Exh. 2, pp. 12-13). Neither Local 449 nor Local 182 informed James of his obligation under the contract (R. 25-26; Tr.

48, 59-60, 138-139). On December 31, 1964, almost two years after James' expulsion from Local 182, and almost one year after the execution of the union security agreement, the Company, upon being advised by Local 182 that James was in arrears in his dues and should be suspended, discharged him (R. 26; Tr. 39, 42-43).

Relying on its decision in the *Philadelphia Sheraton Corporation* case, 136 NLRB 888, enforced *sub nom. National Labor Relations Board* v. *Hotel, Motel and Club Employees' Union, Local 568*, 320 F. 2d 254 (C.A. 3), the Board found that, since Local 182 had caused James' discharge without first having apprised him of his obligation under the union security clause of the contract to join a union, it had violated Section 8(b)(2) and (1)(A) of the Act (R. 27-28).[3] The Board ordered Local 182 to cease and desist from such conduct in the future, to make James whole for any loss of pay, and to notify the Company that it had no objection to James' reemployment (R. 32-33, 39-41). The court of appeals sustained the Board's findings and enforced its order (Pet. App. 14-16).

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[3] Section 8(b)(2) makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)." Section 8(a)(3) in turn makes it unlawful for an employer, except where such action is privileged under a union security agreement, "by discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization."

ARGUMENT

Petitioner does not challenge the principle that a union violates the Act if it procures the discharge of an employee under a union security agreement for non-payment of dues, without first having apprised the employee of the contract and his obligation thereunder. Petitioner's sole contention is that the Board erred in finding that James was unaware of his obligation. This presents only an evidentiary issue, which does not warrant further review. In any event, the evidence before the Board amply supports its finding that James had not been advised of his obligation under the contract.[4]

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[4] The fact that James claimed to have sent the Union dues payments in February 1963 and January 1964 (Pet. 5, 9) does not establish his awareness of the contract, for it did not take effect until February 1, 1964, and it did not obligate James to pay dues to the Union until March 31, 1964. Nor is such awareness established by James' tender of dues in January 1965 (Pet. 7, 9), for this occurred after his discharge. Finally, the fact that James acknowledged a general awareness of his obligation to pay dues to the Union, flowing from his prior membership therein (Pet. 8), does not establish that he was aware that such payment was compelled, under penalty of discharge, by the contract; indeed, James testified (Pet. 8) that he "wasn't really aware" of the contract.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1969.

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